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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,053	09/25/2006	Akihiko Nishio	L9289.06205	6081
52989 7590 04/30/2012 James Edward Ledbetter 1875 Eye Street Suite 1200 Washington, DC 20006				
EXAMINER GHOWRWAL, OMAR J				
ART UNIT		PAPER NUMBER		
2463				
MAIL DATE		DELIVERY MODE		
04/30/2012		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/594,053 Examiner OMAR GHORWAL	Applicant(s) NISHIO, AKIHIKO Art Unit 2463
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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 April 2012 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

NO NOTICE OF APPEAL FILED

1. ☒ The reply was filed after a final rejection. No Notice of Appeal has been filed. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114 if this is a utility or plant application. Note that RCEs are not permitted in design applications. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action; or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

c) ☐ A prior Advisory Action was mailed more than 3 months after the mailing date of the final rejection in response to a first after-final reply filed within 2 months of the mailing date of the final rejection. The current period for reply expires _____ months from the mailing date of the prior Advisory Action or SIX MONTHS from the mailing date of the final rejection, whichever is earlier.

Examiner Note: If box 1 is checked, check either box (a), (b) or (c). ONLY CHECK BOX (b) WHEN THIS ADVISORY ACTION IS THE FIRST RESPONSE TO APPLICANT'S FIRST AFTER-FINAL REPLY WHICH WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. ONLY CHECK BOX (c) IN THE LIMITED SITUATION SET FORTH UNDER BOX (c). See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) or (c) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendments filed after a final rejection, but prior to the date of filing a brief, will not be entered because:

a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

b) ☐ They raise the issue of new matter (see NOTE below);

c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): (a) ☐ will not be entered, or (b) ☒ will be entered, and an explanation of how the new or amended claims would be rejected is provided below or appended.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing the Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____

STATUS OF CLAIMS

14. The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

/Anh-Vu Ly/ Acting SPE Art Unit 2463	/O. G./ Examiner, Art Unit 2463
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Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the U.S.C. 112 first paragraph rejections should be withdrawn because para. 0086 of the Published Instant Application describes a "predetermined error rate to be achieved" and para. 0029-0032 of the Published Instant Application describe channel quality estimation can indicate the quality of the channel at reception according to aspects of the present invention. Applicant then concludes persons of ordinary skill in the art would recognize Applicant invented the claimed features and then Applicant cites MPEP 2163.02 and In Re Gostel (page 8, Remarks).

The Examiner respectfully disagrees with Applicant's arguments and maintains the U.S.C. 112 first paragraph rejections (page 8, Remarks). Examiner has considered Applicant's arguments and has viewed MPEP 2163.02 (which includes In Re Gostel).

MPEP 2163.02 states: "the subject matter of the claim need not be described literally (i.e., using the same terms or in haec verba) in order for the disclosure to satisfy the description requirement...but if a claim is amended to include subject matter, limitations, or terminology not present in the application as filed, involving a departure from, addition to, or deletion from the disclosure of the application as filed, the examiner should conclude that the claimed subject matter is not described in that application."

The Examiner still believes that the claim contains subject matter not from the disclosure. A person of ordinary skill in the art would not understand a "predetermined error rate" to mean a "determined error probability", as a rate pertains to speed, and a probability pertains to the likelihood that an event occurs. They are completely different. Additionally, para. 0029-0032 as provided by the Applicant only mention control channel and data channel quality information is received, but it does not mention how this relates to "MCS with which the control/data channel is to be received at a predetermined error probability" as claimed. As discussed earlier, para. 0086 does not mention anything to do with reception (rather, it mentions the word "achieved") nor anything to do with error probability (rather, it mentions the terms "an error rate"). Hence, these two citation sections are not tied together, nor do they teach the claim limitations that are under the U.S.C. 112 rejection.

Examiner's response to Applicant's reply is in accordance with 2163.04, which states "Upon reply by applicant, before repeating any rejection under 35 U.S.C. 112, para. 1, for lack of written description, review the basis for the rejection in view of the record as a whole, including amendments, arguments, and any evidence submitted by applicant....If the record still does not demonstrate that the written description is adequate to support the claim(s), repeat the rejection under 35 U.S.C. 112, para. 1, fully respond to applicant's rebuttal arguments, and properly treat any further showings submitted by applicant in the reply."

Applicant also argues that the NACK message of Rong does not teach channel quality of the control channel (pages 9-10, Remarks). The Examiner respectfully disagrees. The NACK indicates proper reception over the control channel, as opposed to a failure of reception (para. 0029-0031), i.e. the reception status of data over the channel is channel quality.

Applicant argues Rong does not teach "assignment information of a data channel or MCS information" and that Robertson does not teach "the dedicated control channel which the target of the SIR measurement is used to transmit information of a data channel or MCS information", therefore claims 1 and 12 should be allowed (page 10, Remarks).

The Examiner respectfully disagrees. Applicant did not consider the Leib reference, which indicates MCS schemes are achieved for a given SIR (Leib, col. 1, lines 25-37). When tied with Robertson's teaching of received quality data indicating SIR, as well as the primary reference, these references in combination teach the claimed "receives first channel quality of a control channel to transmit control information which includes MCS information". Note the "or" limitation excludes the "assignment information of a data channel" from examination.

Applicant also argues Ghosh does not teach "a mobile station transmits power control data bit based on the result of both control and communication channels' measured SIRs" because it teaches that the mobile station transmits the power control data bit to the base station regardless of measured SIRs (pages 11-12, Remarks).

The Examiner respectfully disagrees. Applicant ignores the sentence prior to the one they cite from col. 1, lines 20-34 of Ghosh which states "The mobile station measures a signal-to-interference ratio of the code-demultiplexed control channel signal or communication channel signal or both, and compares the result to a power control threshold to produce a power control data bit." Therefore it is obvious that since the result of the SIR values are used to produce the power control data bit, one cannot say that the power control data bit is independent of measured SIRs as Applicant alleges.

Applicant also alleges that Ghosh does not teach transmitting "channel quality information of the data channel" because the power control data bit is not the same as channel quality information of a data channel and that Ghosh does not teach transmitting information based on the "measured first channel quality of the control channel" (page 12, Remarks).

The Examiner respectfully disagrees. Since the power control data bit indicates a target power level of the communication channel (Ghosh, col. 1, lines 20-34), this pertains to the data channel's quality (i.e. the power level is a measure of quality). Also, the same citation in Ghosh mentions the power control data bit is transmitted based on SIR of both the control channel and the communication channel.